



Pierce County

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March 25, 2016

CONFIDENTIAL

Keith Kubik
Kubik Mediation
P.O. Box 808
Vaughn, WA 98394

Sent via e-mail

Re: *CCS/Conmed vs. Pierce County*
Mediation date: 4/8/2016
Subject to ER 408

Dear. Mr. Kubik:

Thank you for giving us the opportunity to submit a mediation brief.

Overview

I represent the Pierce County Sheriff's Department in the above-entitled contract dispute. Pierce County contracted with Conmed, Inc. to operate its medical clinic in the Pierce County Jail. The County's Request for Proposals required bidders to have the capability of operating a medical clinic to serve 1,382 inmates, ranging from maximum security to minimum security. The contract included the provision of pharmaceuticals for mental health inmates, although providing mental health services was not part of the contract. The Mental Health Services Unit continued to be staffed by County employees. The County also retained its long-time Director of Medical Services, Dr. Balderrama.

The contract became effective **on February 1, 2014** and was terminated by the County on **August 5, 2015**. The maximum consideration for the initial term of the agreement was not to exceed **\$5,291,642.00**. The County was to pay **\$372,744.77 per month**. Because Conmed did not fulfill its obligations under the contract and had not cured the defects even after repeated notifications and requests, the County withheld payment for the months of April, May, June, and July, 2015, totaling \$1,490,979.08. Withholding payment is a remedy contained within the contract under Section 17, page 5.

To varying degrees, Conmed was continually in default with the terms of the contract. The County worked with Conmed extensively in order to gain compliance with the terms of the contract, the overarching goal of which was to provide quality medical care to the inmates in the jail. Eventually, the County had no choice but to put Conmed on notice that the County would begin to withhold payment pursuant to the terms of the contract, unless Conmed was able to cure the defects. (As I'm sure you know, the level of care that the government is required to provide to inmates is the same as that required for patients in the community.) Unfortunately, Conmed did not meet the requirements of the contract and the County withheld payment for four months, still with no appreciable results. Therefore, the County terminated the contract with Conmed.

The Contract – Attachment 1

The Professional Services Agreement, see Attachment 1, between the parties was entered into in January 2014. During the request for proposal process, the County looked into Conmed's litigation history and performance in other facilities. However, right around the time the contract was signed, Conmed was bought out by Correct Care Solutions (CCS). CCS took-over/bought out many other correctional healthcare companies at that same time. One must consider the consequences of this business decision: First, it seems likely that the company grew too fast to competently run all of the other businesses it had taken over all at once. And second, with CCS buying out so many other correctional healthcare companies, Pierce County's options for a contracted health care provider were significantly diminished, both at the time it entered into the agreement and throughout the course of the agreement.

The **Scope of Work**, Exhibit "A", page 8 of the contract sets forth Conmed's responsibilities. Conmed did not fulfill its contractual obligations, because they had either intermittent or continual failures under the following Scope of Work sections:

A, B, D, E, G, L, M, O, P and T

Section A requires that Conmed have the managerial and administrative expertise to operate the medical clinic. Conmed never had an on-site experienced, competent Healthcare Services Administrator (HSA) at the jail clinic. Without a competent individual in this position, operations, staffing, morale and quality of care suffered greatly. Conmed went through a number of HSA's, none of which were qualified. They were unable to provide and maintain adequate staffing levels as required by section E. County employees learned that some of the medical professionals brought into the clinic by Conmed were not licensed to practice medicine in the State of Washington. These individuals had to be escorted out of the jail by corrections staff.

Along with HAS turnovers, there were similar problems obtaining a competent Director of Nursing (DON). In fact there was a period of time when the clinic was entirely without an HSA and a DON at the same time. In addition to those positions being unfilled, there were numerous other medical staff vacancies. There was no management on site and the existing employees at the clinic were not sufficiently trained and were too few in numbers. The quality of care provided fell below the legal standard and jeopardized the health and welfare of the inmates.

The lack of management and failure to train medical employees resulted in literally weekly turnover at the clinic. Corrections staff and other County employees noticed that Conmed treated their own employees very badly. Morale was low, which contributed to the high turnover and poor performance overall.

Conmed kept and maintained medical records very poorly. At times records were not made at all or they were misfiled or lost. Additionally, the shortage of staff combined with lack of competent management resulted in failure to triage and inmates going without medical treatment, without wound care, and without medications.

In spite of Conmed assuring the County that Conmed had its own pharmaceutical contract, for days at a time, inmates in the jail went without medications. The Director of Nursing jokingly announced in a loud voice in the clinic, "We had a drug holiday for one week," as if it were totally insignificant that patients went without medication.

Communication Between Pierce County & Conmed

Throughout the course of the contract, the County had continual contact with Conmed; the parties were in regular communication. There were phone calls, emails, meetings with on-site managers, and letters. Some meetings were more formal and involved the Chief of Corrections as well as corporate personnel from Nashville Tennessee. Numerous other meetings, including those mandated in the Scope of Work Section N, were held to discuss ongoing problems with the clinic operation. Additionally, Corrections Lieut. Jackson, was assigned to monitor contract compliance.

Attached hereto are copies of letters between Conmed and the County regarding the issues referred to above. Most of these letters are from Julie Williams, Contract Services Manager for the Sheriff's Department, and Conmed's responses thereto. Ms. Williams raises issues and concerns needing to be addressed. Conmed responds, each time acknowledging the problems raised by the County, and offering solutions and plans to cure the defects. As you can see from reading these letters, the same issues arose over and over. Unfortunately, Conmed's

solutions were nothing more than planning that never came to fruition. Conmed personnel were always willing to meet and always seemed genuinely concerned about their deficient performance. As they tried different "fixes," the County held out hope that things would get better. The County made every effort to make the arrangement work.

It is important to note that Conmed never denied the deficiencies and failures, essentially conceding that they were in default. Additionally, their attorney Ms. Schwartzmiller, left me a voice mail message on August 10, 2015, five days after the contract was terminated. This was after the County had withheld four months of payments totaling \$1,490,979.08. Attachment 12 is a transcription of her voicemail, wherein she indicates she wants to discuss the termination. She tells me that Conmed is not refuting the termination, that they are "accepting it," and that "it's fine." She mentions nothing about the County owing any money or that there was any dispute about that. Rather, she indicates that the reason for her call is just for the company's benefit to talk about the circumstances surrounding the termination. In listening to the message, her tone is very conciliatory and she gives the impression that they just want information for future performance.

As you review the correspondence, you will see that Conmed never fulfilled the obligations of the contract, which was to provide quality medical care to the inmates in the Pierce County Jail. In other words, **Conmed was overpaid for each and every month that they were paid** up until the County withheld payment. As such, should Conmed file a lawsuit against Pierce County for breach of contract, a counterclaim will surely follow. It is the County's position that even if the County does owe Conmed monies for the incompetent employees and the inadequate service during the months that funds were withheld, the amount that Conmed was overpaid in the preceding months far outweighs any compensation a jury may award them under the contract.

Aside from the fact that Conmed's performance under the contract was morally reprehensible, it has left the County open to lawsuits. The County's efforts to manage the contract and make it work demonstrate that the County was not "deliberately indifferent" to the needs of the inmates, which would be a defense to inmate lawsuits. However, the County should not be subject to those lawsuits in the first place; they are costly to defend.

Conclusion

Conmed contracted to provide quality medical care, a basic human right and civil right. It was not merely performing a janitorial function, redecorating, gardening or some undertaking of a lesser nature. Medical care is profoundly important and requires the highest degree of attentiveness, competency, dedication, ethics and professionalism.

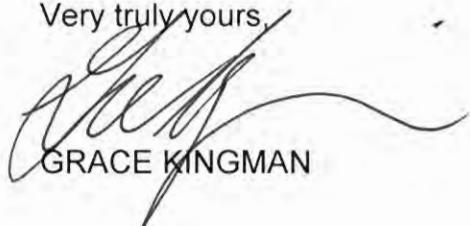
March 25, 2016

Page | 5

Lieut. Jackson and other County employees kept notes and records, sometimes on a daily basis, of the incompetent operation of this medical clinic. Most of these documented issues were brought to Conmed's attention at one time or another. The point is, we retained the records and the evidence needed to prove our counterclaim and disprove Conmed's claim for breach. The numerous specific instances of conduct contained in our records would shock the conscience of the court.

I look forward to meeting you and working with you on April 8, 2016, at our Mediation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Grace Kingman".

GRACE KINGMAN